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AT&T says cooperation with NSA could be legal

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http://news.com.com/AT38T+says+cooperation+with+NSA+could+be+legal/2100-1030_3-6108386.html

Story last modified Thu Aug 24 13:11:04 PDT 2006

A correction was made to this story. Read below for details.

ASPEN, Colo.--An AT&T executive on Tuesday offered a glimpse into how a company could be required to cooperate with a federal entity such as the National Security Agency.

James Cicconi, AT&T's senior executive vice president for external and legislative affairs, said there are "very specific federal statutes that prescribe means, in black and white law, for provision of information to the government under certain circumstances."

"We have stringently complied with those laws," Cicconi said (MP3). "It's pretty obvious, you know, as far as the court case is going, that they've not reached a different conclusion."

AT&T has neither confirmed nor denied that it has cooperated with the NSA.

That's a slightly more detailed explanation than AT&T has publicly offered so far. In February, AT&T declined to answer related questions from CNET News.com. In May, an AT&T spokesman told News.com: "Without commenting on or confirming the existence of the program, we can say that when the government asks for our help in protecting national security, and the request is within the law, we will provide that assistance."

James Cicconi
AT&T lobbyist

Because Cicconi was AT&T's general counsel before the merger with SBC Communications, he would have been responsible for reviewing the legality of cooperating with the NSA. A longtime Republican, Cicconi worked as deputy chief of staff to President George H.W. Bush and as an assistant to President Ronald Reagan. He's recently served as co-chairman of Progress for America, a prominent group devoted to electing Republican politicians.

Cicconi's remarks--in response to a question at the Progress and Freedom Foundation's annual summit here--seem to indicate that AT&T received formal authorization from the U.S. Department of Justice to authorize the program. The existence of such a letter has never been confirmed.

Cicconi may have been referring to an obscure section of federal law, 18 U.S.C. 2511, which permits a telecommunications company to provide "information" and "facilities" to the federal government as long as the attorney general authorizes it. The authorization must come in the form of "certification in writing by...the Attorney General of the United States that no warrant or court order is required by law."

If a letter of certification exists, AT&T could be off the hook in its lawsuits. Federal law says that a "good faith" reliance on a letter of certification "is a complete defense to any civil or criminal" lawsuit, including one brought against the company by the Electronic Frontier Foundation. (Other officials, including the deputy attorney general and state attorneys general, also are authorized to write these letters.)

In its class action lawsuit filed in January, the EFF alleged that AT&T violated federal wiretapping laws by cooperating with the NSA.

After EFF's lawsuit was filed, reports of a secret room in an AT&T building in San Francisco surfaced and have become central to the nonprofit group's litigation. A former AT&T employee, Mark Klein, has released documents alleging the company spliced its fiber optic cables and ran a duplicate set of cables to Room 641A at its 611 Folsom St. building. Redacted documents show that AT&T has tried to offer benign reasons for the existence of such a room.

Correction: An earlier version of this story misrepresented AT&T's public statements with regard to an NSA spying

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program.

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